

b. Remarks.

All claims, namely, claims 1 – 15 were rejected based on 35 USC §112 for (1) lack of an antecedent basis for "said back portion frame" beginning on line 23, first page, and (2) lack of an antecedent basis for "said seat portion frame" beginning on line 8, second page. The basis for these rejections has been obviated.

Claim 1 was likewise rejected for (1) lack of an antecedent basis for "the midpoint" beginning on line 14, second page, (2) lack of an antecedent basis for "said seat portion frame member" beginning on line 17, second page, and, (3) lack of an antecedent basis for "the/said bleacher seat plank" beginning on line 21, second page. The basis for these rejections has been obviated.

Claim 11 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for reciting on page 3, line 14, "greater than the standard width of bleacher seating", the finding being that this language is vague and unclear. As a curative response this claim language has been amended as follows: -- greater than the [standard] width of bleacher seating--. In addition the preamble has been amended to recite an antecedent for "width". Claim 11 now recites in the preamble:

A method for [the] a rental of a bleacher chair for events having bleacher seating to a customer attending said event, the bleacher seating having a width, which method comprises:

Claim 2 was objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. In response claim 2 has been withdrawn. Claim 2 has been modified into Jepson format and rewritten as

independent claim 16 to clearly recite both the "non-contact" of both the rearward and forward members and the "elevated foot rest" aspect of the forward member from the prior art.

Independent claims 1 and 12 were rejected under 35 U.S.C. 102(b) as being anticipated by Gleckler et al. (4,772,068) on the basis of the following:

Gleckler discloses In Figures 1 and 7 an adjustable chair, including all the features of the claimed invention. The chair has an elongated rod 12, 39 attached to a "U"-shaped seat frame 11, 37 and a "U"-shaped back frame 15, 42. The seating surface has two lateral arms 20, 43 joined to the back frame by fasteners 21. The forward and rear leg members join the armrest in the proper locations with fasteners 31, 37 and 19, 45. Moreover, the telescoping features of Gleckler accommodate the ratio limitations with the forward member and rear member, as claimed in both claim 1 and claim 12.

However this §102 (b) rejection is now traversed in that claims 1 and 12 as amended and new independent Jepson claim 16 recite at least two elements not mentioned or recognized in the action last quoted above. As evinced for the following, neither are claims 1 and 3-16 anticipated nor averred, suggested, intimated, or taught by Gleckler et al. or Gleckler et al. combined with Lippert and/or the other references cited because:

(i) Claim 1 recites "*said bottom of said seat portion being the only portion of said chair in contact with said bleacher*" and a "*suspended foot rest behind a bleacher seating plank in front of the bleacher seating plank on which the bleacher chair rests*";

(ii) Claim 12 recites "*said seat portion frame juxtaposed upon the bleacher seat converts the bottom horizontal bar of said forward member into a [an elevated] foot rest*", and

(iii) Claim 16 recites "an improvement comprising an elevated horizontal bar extending between each of said rearward members that provides a *suspended foot rest behind a bleacher seating plank* and in front of another bleacher seating plank on which the bleacher chair rests".

[Italics added for emphasis]

It is an important feature of the invention that it provides a comfortable foot rest and is easy to use and not encumbered by the clamps and u-shaped clips of Lippert. The foot rest anticipates a natural desire of people seated in bleachers to put their feet up to relieve their back muscles. The foot rest cantilevers the novel chair such that it does not have to be clamped down. Even so, the natural accumulation of the center of gravity of a seated person in the vicinity of the seat portion alleviates the need for clamping down the chair as suggested by Lippert. For this reason applicants have now positively recited the limitation in claim 1 that the only contact with the bleacher plank or tier is the juxtaposed seat bottom, to wit:

Claim 1 (amended). In combination with a bleacher structure having tiers of bleacher seating planks of a width W, a collapsible portable disengageable bleacher chair with a plurality of portions including a seat portion having a top and a bottom, [said bottom of said seat portion being the only portion of said chair in contact with said bleacher structure, said bottom being juxtaposed on top of one of said seating planks of the bleacher structure,] said bleacher chair comprising:

Said bottom of said seat portion being an only portion of said bleacher chair in contact with said bleacher structure, said bottom being juxtaposed on top of one of said seating planks of the bleacher structure;

There is no suggestion in Lippert or Lippert combined with Gleckler et al. to limit the connection to the bleacher plank in this fashion and use a foot rest as a counterweight.

As to the bar 36 in Hopkins (U.S. No. 3,114,572) it is a kick bar and not a foot rest. In Cornell (U. S. No. 4,536,026) the elevated spacer 44 is suggested only as a means for rigidly attaching legs 46. There is no suggestion to use the spacer 44 as a foot rest or to reinforce the spacer 44 for upward support as a foot rest.

In our thorough review of the art cited as prior art, we point out that the Clinton reference was not cited and it was actually published after reduction of the applicant's invention to practice. Markman (U.S. Patent No. 4,550,246) is relevant in that it assigns a unique identifier to a diverse set, namely, an individual's dry cleaning to identify it. However, Markman and the references cited therein are all substantially different in that positive identification of the person picking up a unit of the set is not required. Moreover, the unique members of the set are not being rented and returned. Tort liability for misuse of a member of the set is not an issue.

In view of the above structural limitations not being presented either in Gleckler et al. or Lippert, applicant traverses the rejection of Claims 3-10 under 35 U.S.C. 103(a) as being unpatentable over Gleckler et al (4,772,068) in view of Lippert (3,994,529). The basis for the rejection does not teach to provide a foot rest nor is it mentioned in the following excerpt of the rejection:

Gleckler discloses an adjustable chair including most of the mechanical features in the present invention. However, Gleckler fails to include details in the construction elements and fabrics used on the chair. In regards to claims 3 and 7-10, Lippert discloses a stadium seat with "tubular members of aluminum" (col.2, line 24). With regards to claims 4-6, Lippert also teaches of "fabric strips 25 and 26 interwoven and connected to the members 22-24, as shown [in Figure 1]. The fabric may consist of plastic material" (col.2, lines 21-23). Lippert further teaches in col. 1, lines 58-64, "the chair assembly has utility not only as a stadium chair

but also as a beach or lounge chair; further, the chair assembly is characterized by simplicity, portability, and collapsibility, light weight construction, ease of set up and collapse in each of its utility modes; adaptation to different size stadium seats or benches, and high strength." It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the different materials for fabrics and tubular frames, as taught by Lippert, for modifying Gleckler's adjustable chair. Furthermore, from Lippert's teachings, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use Gleckler's chair <for>from other utilities, keeping the same structure.

Actually, the Lippert chair when used as a stadium chair omits an important feature in that the seat rests not on the bleacher plank but on its own folded and retracted front leg member 31. Lippert, Fig. 5. This removes the possibility of any suggestion that it would be obvious to use the member 31 as a foot rest. Hence, Lippert neither suggests nor teaches the juxtaposition of its seat on a bleacher seat plank nor the comfort of a foot rest.

On like grounds, applicant traverses the rejection of Claims 11 and 13-15 under 35 U.S.C. 103(a) as being unpatentable over Gleckler et al (4,772,068) in view of Sudbury Taylor Rental in that there is no averment of a foot rest and the juxtaposing to a bleacher seat, to wit:

Regarding claim 11, Gleckler discloses the structure, as rejected above for claims 1 and 12, however, Gleckler does not teach of a method for renting the chairs. Sudbury Taylor Rental teaches of renting chairs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rent the chairs of Gleckler, as taught by Sudbury Taylor Rental. In regards to claims 13-15, the method disclosed for renting is old and well known.

The office takes official notice that the method of using a computer for storing data, a scannable bar code, a bar code reader, a credit card transaction, and an electronic signature are old and well known in the art and would have been obvious to use with the method of renting Gleckler's adjustable chairs.

The combination of the official notice and the Gleckler reference raise two substantial obviousness issues: (a) Does the combination presented teach each element claimed by the inventor? And, (b) Is there more claimed in applicant's method claims as

now recited than the combination of elements officially noticed? Or, (c) are there elements recited by the applicant as part of the invention that the Office is officially noticing as obvious by using hindsight aided by applicants' disclosure?

The Office is solicited to acknowledge that it is an error to reconstruct the applicants' claimed invention from the prior art by using the framework recited in claims 1 and 12. Gleckler fails to mention not one but two recited features of the claimed invention. It is plain error to ignore these two recitations to make a rejection of claims 1 and 12. The rejection should be withdrawn. It is an impermissible error for the Office to pick and choose among isolated disclosures and ignore recited features to reject claims 1, 12, and 13. See, *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Newell*, 13 USPQ2d 1248 (Fed. Cir. 1989); *In re Zurko*, 42 USPQ2d 1476 (Fed. Cir. 1997) *rehearing in banc granted*, 116 F. 3d 874 (Fed. Cir. 1997). The recited and claimed elevated foot rest of the applicants is not suggested as an element or feature of Gleckler. Perhaps the Examiner misread the reference therein to a "back rest frame 15" to somehow suggest a foot rest. Moreover, despite the express suggestion in Lippert that "stadium seats and benches are exceptionally uncomfortable" no modification is suggested by Lippert to create a foot rest despite a detailed explanation of its modification with extracting legs to convert it to a beach or lounge chair. See, *Lippert*, Col.1, lines 44-59; Fig. 2 showing converted chair resting on a support surface 35. The other element, recited in claim 12 that the Office has erroneously inferred to be in the prior is the elevation of the forward horizontal bar for an "elevated" foot rest. Claim 12 (amended) recites the following improvement:

"...an improvement comprising said seat portion frame juxtaposed upon the bleacher seat, and wherein, the portion of said rearward member extending beyond the junction of said rearward member with said seat portion frame is substantially shortened and [avoids contact] and in non-contact with the bleacher support structure [and] wherein the one first unopposed side of said forward member is a horizontal bar wherein said seat portion frame juxtaposed upon the bleacher seat converts the bottom horizontal bar of said forward member into an elevated foot rest."

In Gleckler et al. neither are there non-contact non-supporting rear legs that use the bleacher itself for suspension nor is there a non-contact non-supporting front horizontal bar for an elevated foot rest. Lippert adds the legs to convert his stadium seat to a beach or lounge chair in which case the legs become the only support for the seat member.

The officially noticed items refer to the following method of use elements recited in independent method 13, namely:

- (a) a computer for storing data,
- (b) a scannable bar code,
- (c) a bar code reader,
- (d) a credit card transaction, and
- (e) an electronic signature.

Re-examination of the claims, especially claim 13 (amended) and its recitation of distinct limitations to the above recited administratively-noticed-as-old elements, namely, the following (*Note: Limitations emphasized by italics below appear neither in the prior art nor as part of the officially noticed elements*):

- (1) A method for the *rental of a portable bleacher chair with a foot rest* with the method being limited for use at an event having bleacher seating;
- (2) The method being for *rental inside said event only to a customer having a unique personal identification and attending said event*;
- (3) each said bleacher chair comprising *a unique identification means for uniquely identifying each said bleacher chair*;
- (4) providing a computer means for *digitally storing the unique identification means for each bleacher chair*;

- (5) providing a credit card scanning means for scanning the renter's credit card and obtaining a set of data therefrom when the renter checks out a bleacher chair, the computer *means matching the data to the unique identification means for the bleacher chair rented*;
- (6) the computer means further having a signature capture means for electronically capturing said renter's signature authorizing a transaction, the computer means further having a wireless digital phone connection means for sending and receiving credit card data and a printing means for printing a receipt of said transaction; and
- (7) releasing the deposit by *scanning the unique identification means associated with said bleacher chair upon its return to inventory*.

Hence, method claim 13 recites at least six (6) limitations unique to applicants' invention that are neither anticipated nor suggested by the prior art whether viewed singly or in combination.

The Examiner's objection of Fig. 2 of the drawing wherein a reference to a dimension D in the claims was not found in the drawing is proposed to be remedied by substitution of the enclosed new drawing pages 1/3 and 2/3 wherein the distance D is shown and delineated by an open bracket "}" in strict accord with the reference D and accompanying language appearing in claim 1. No new matter has been added. For parity with the claim and the drawings an amendment to the specification to add the "D" has been requested.

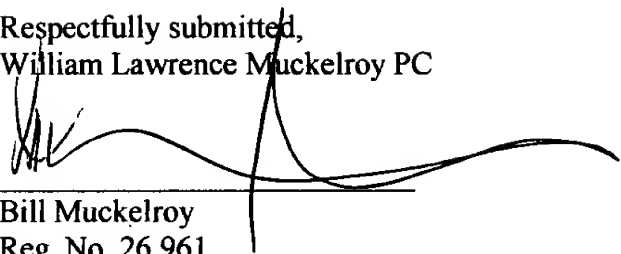
Applicants regret any inconvenience to the Examiner due to the absence of a copy of Reiersen, U.S. Patent No. 5,829,837 which issued on Nov. 3, 1998 for a "Portable Stadium Backrest" from the submitted Form 1449 as well as the lack of a copy of U.S. Patent No. 226,156 issued to Blackler for a "Window-Chair" on April 6, 1880. This was an unintentional administrative error. Copies of these references are submitted with a supplemental Information Disclosure Statement and the appropriate \$180 fee under 37

CFR 1.17(p). Counsel also incorporates therein the recent Financial Times article cited in applicants' Rule 132 declaration.

What the inventors have discovered here is that in a closed set you can take a huge structure such as a bleacher and combine a small spot of the bleacher to a cheap beach-type chair with clever modifications, use gravity and the center of gravity of a person seated to connect them without clips, virtually combine the person and the modified chair uniquely using a unique digital ID for each and as a result solve a security and contraband problem, solve a legal liability issue, and create a new profit center using a digital based method of renting at these closed set events. See, *Johnson et al. v. Johnson, Cir. Ct. W.D. Pa, 60 F. 618 (1894); Flood v. Coe, 31 F. Sup. 348, 45 USPQ 72, Dist. Ct., (D.C. 1940).*

In view of the above remarks and detailed analysis, claims 1, and 3-16 recite inventions patentable over the prior art and a notice of allowance is respectfully solicited. If the Examiner deems additional changes or corrections to the claims necessary it is requested that Examiner call counsel of record at (609) 882-2111 in an effort to promptly resolve same by an Examiner's amendment and/or telephone interview. If counsel is unavailable it is requested that the Examiner designate two times and dates for a return call that he intends to be available at his office to receive a return call.

Respectfully submitted,
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Enclosures: Amendment A, Certificate of Express Mailing; Certificate of Mailing; three-month extension request with attorney's check - \$465 fee

Amended Information Disclosure Statement with \$180 fee; proposed drawing corrections and substitutes.

CERTIFICATE OF MAILING

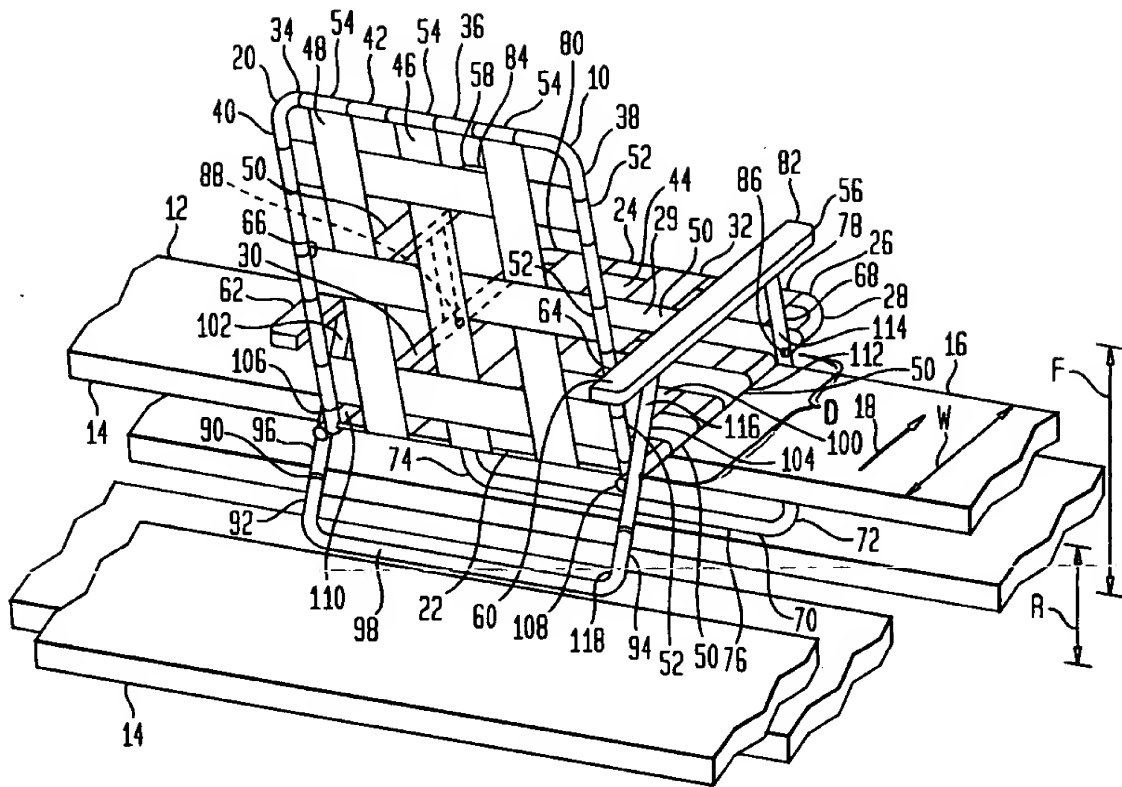
I hereby certify that this Amendment A with accompanying documents (The fee and petition for a three-month extension; substitute drawings and proposed drawing corrections; and, amended information disclosure statement and form 1449 with fee) are being deposited with the United States Postal Service with sufficient postage as first class mail and/ or express mail in an envelope addressed to "Mail Stop Fee Amendments, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on May 22, 2003.

Typed or printed name of person signing this certificate: Irene Christine

Signature: 



FIG. 1





2/3

FIG. 2

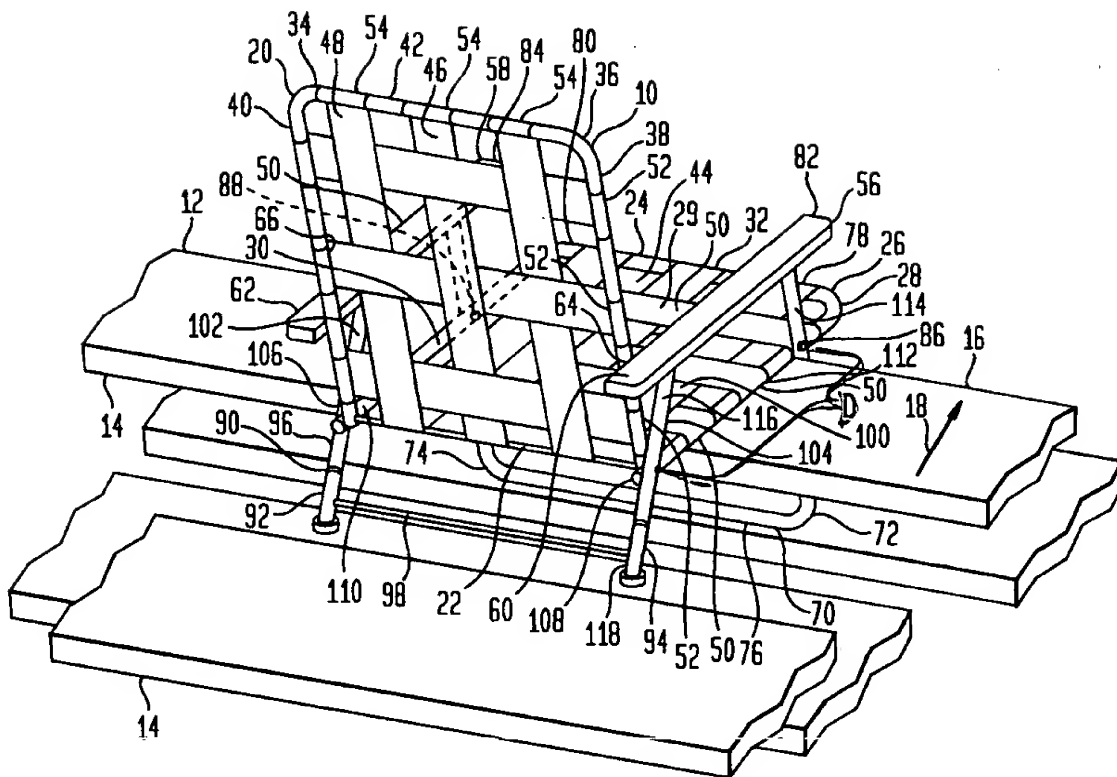


FIG. 3

